

Colley



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Just In Time Mfg., Inc.

File: B-238998.4

Date: September 17, 1990

Larry Colley for the protester.
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. An amendment to an invitation for bids (IFB) is material where the amendment increases the mandatory option quantity from 20,000 to 50,001, and thus has a significant impact on the quantity required under the IFB.
2. Bid is properly rejected as nonresponsive where bidder fails to acknowledge a material amendment requesting an additional option quantity of items being procured, and thus does not bid on the precise quantity called for by the solicitation because, absent such acknowledgment, the bidder is not obligated to furnish the additional items.

DECISION

Just In Time Mfg., Inc. protests the rejection of its bid under invitation for bids (IFB) No. DLA100-90-B-0104, issued by the Defense Logistics Agency (DLA) for coat liners. Just In Time's bid was rejected as nonresponsive because it failed to acknowledge an amendment to the IFB.

We deny the protest.

DLA issued the IFB on January 31, 1990, with bid opening scheduled for March 2. The IFB included separate schedules calling for unit and extended prices on 50,001 coat liners as the basic quantity, and 20,000 as the option quantity. The bidding schedule for the basic quantity contained a note stating that the "option quantity consisting of 20,000 each is contained on the next page."

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prior to bid opening, DLA issued two amendments to the solicitation. Amendment No. 1 stated in one section that the option quantity was increased from the original 20,000 coat liners to 50,001. Included with the amendment, however, was a copy of the original bid schedule for the basic quantity, which, as noted above, stated that the option quantity was 20,000; amendment No. 1 did not include a new bid schedule for the option quantity. To clarify the ambiguity in amendment No. 1, DLA issued amendment No. 2, which deleted amendment No. 1 in its entirety; corrected the language in the basic quantity bid schedule to reflect the increased option quantity requirement of 50,001; added a new bid schedule for the 50,001 option quantity; advised bidders that bidding on the option quantity was mandatory; and extended the bid opening date to March 13.

On February 25, Just In Time submitted bid prices on the original IFB bid schedules for the basic and option quantities. Just In Time also submitted a signed copy of amendment No. 1, including a completed copy of the basic quantity bid schedule which DLA had erroneously made part of amendment No. 1. The firm did not acknowledge amendment No. 2.

Although the basic quantity bid schedule attached to amendment No. 1 was identical to the original IFB bid schedule, Just In Time inserted a different price for the 50,001 basic quantity requirement on each schedule. On the original bid schedule, Just In Time listed \$15.96 as its unit price and \$798,015.96 as the total price for the 50,001 coat liners; on the bid schedule contained in amendment No. 1, Just In Time listed \$19.15 as its unit price and \$957,519.15 as its total price for the 50,001 coat liners. On the bid schedule for the original 20,000 option quantity, Just In Time inserted \$19.15 as its unit price and \$957,519.15 as its total bid price, prices identical to those it bid for the basic quantity of 50,001 on the schedule attached to amendment No. 1. Since Just In Time failed to acknowledge amendment No. 2, the contracting officer found Just In Time's bid nonresponsive.

Just In Time argues that it is entitled to the award as the low responsive bidder based on the fact that the firm agrees to all the terms and conditions in amendment No. 2; the firm promises not to change its bid price; and the government will save \$100,000 by awarding the contract to Just In Time.

A bid that does not include an acknowledgment of a material amendment must be rejected because absent such acknowledgment, the bidder is not obligated to comply with the terms

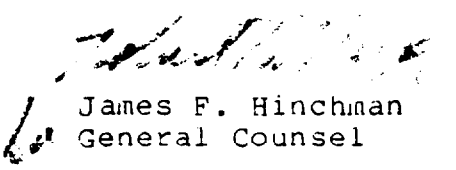
of the amendment, and thus its bid is nonresponsive. Atlas Roofing Co., Inc., B-237692, Feb. 23, 1990, 90-1 CPD ¶ 216. An amendment is material if it would have more than a trivial impact on price, quantity, quality, delivery, or the relative standing of the bidders. Bonded Maintenance Co., Inc., B-235207, July 14, 1989, 89-2 CPD ¶ 51. The test to be applied in determining bid responsiveness is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the amended solicitation which, upon acceptance, will bind the contractor to perform in accordance with all the terms and conditions thereof. See Rocky Ridge Contractors, Inc., B-224862, Dec. 19, 1986, 86-2 CPD ¶ 691.

Amendment No. 2 substantially changed the solicitation requirements by unequivocally increasing the required option quantity from 20,000 to 50,001. In doing so, amendment No. 2 clearly had more than a trivial impact on quantity and, therefore, was material. Absent an acknowledgment of the amendment, Just In Time did not obligate itself to furnish the increased option quantity. Although the protester did acknowledge amendment No. 1, that amendment was ambiguous as to the actual option quantity required, since it stated that the option quantity had been increased to 50,001 yet included a copy of the original bid schedule indicating an option quantity of 20,000. In addition, the only option price Just In Time submitted was on the original bid schedule, which called for 20,000 coat liners. Thus, even if amendment No. 1 had clearly established the increased option quantity requirement, the protester's mere acknowledgment of the amendment, without inserting a price for the higher quantity, would not be sufficient to constitute a bid for the added items. See Larry's Inc., B-230822, June 22, 1988, 88-1 CPD ¶ 599. Accordingly, DLA properly rejected Just In Time's bid as nonresponsive.

To the extent that Just In Time now contends that it will furnish the additional quantity at the price in its bid, a nonresponsive bid cannot be made responsive by explanations after bid opening. See E.H. Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 CPD ¶ 508. Finally, even assuming, as Just In Time claims, that DLA would save \$100,000 by accepting its bid, the importance of maintaining the integrity of the

competitive bidding process outweighs any pecuniary advantage that DLA might gain by accepting a nonresponsive bid. See Sac & Fox Indus., Ltd., B-231873, Sept. 15, 1988, 88-2 CPD ¶ 250.

The protest is denied.


James F. Hinchman
General Counsel